

CIVIL COVER SHEET

The JS-44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON PAGE TWO)

E-filing

I.(a) PLAINTIFFS

FIKRET ASHKAR

(b) COUNTY OF RESIDENCE OF FIRST LISTED PLAINTIFF San Francisco
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) ATTORNEYS (FIRM NAME ADDRESS AND TELEPHONE NUMBER)
HIGHMAN, HIGHMAN & BALL (415) 982-5563
870 Market St., #467 SF, CA 94102

DEFENDANTS

TGC 24 HOUR TRUCK REPAIR INC.: TGC TRUCK
REPAIR, INC Does I-XX

COUNTY OF RESIDENCE OF FIRST LISTED DEFENDANT San Francisco
(IN U.S. PLAINTIFF CASES ONLY)
NOTE: IN LAND CONDEMNATION CASES USE THE LOCATION OF THE
TRACT OF LAND INVOLVED.

ATTORNEYS (IF KNOWN) NORMAN LA FORCE, ESQ.
FORTUNE, DREVLOW, ET AL (415) 227-2300
560 Mission St., 21st Flr., SF, CA 94105

II. BASIS OF JURISDICTION (PLACE AN X IN ONE BOX ONLY)

1 U.S. Government Plaintiff
 3 Federal Question (U.S. Government Not a Party)
 2 U.S. Government Defendant
 4 Diversity
(Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (PLACE AN X IN ONE BOX FOR PLAINTIFF
(For diversity cases only) AND ONE BOX FOR DEFENDANT)

	PTF	DEF	PTF	DEF	
Citizen of This State	<input checked="" type="checkbox"/> 1	<input checked="" type="checkbox"/> 1	Incorporated or Principal Place of Business In This State	<input checked="" type="checkbox"/> 4	<input checked="" type="checkbox"/> 4
Citizen of Another State	<input checked="" type="checkbox"/> 2	<input checked="" type="checkbox"/> 2	Incorporated and Principal Place of Business In Another State	<input checked="" type="checkbox"/> 5	<input checked="" type="checkbox"/> 5
Citizen or Subject of a Foreign Country	<input checked="" type="checkbox"/> 3	<input checked="" type="checkbox"/> 3	Foreign Nation	<input checked="" type="checkbox"/> 6	<input checked="" type="checkbox"/> 6

IV. ORIGIN

(PLACE AN "X" IN ONE BOX ONLY)

<input checked="" type="checkbox"/> Original Proceeding	<input checked="" type="checkbox"/> Removed from State Court	<input checked="" type="checkbox"/> Remanded from Appellate Court	<input checked="" type="checkbox"/> Reinstated or Reopened	<input checked="" type="checkbox"/> Transferred from Another district (specify)	<input checked="" type="checkbox"/> Multidistrict Litigation	<input checked="" type="checkbox"/> Appeal to District Judge from Magistrate Judgment
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V. NATURE OF SUIT (PLACE AN "X" IN ONE BOX ONLY)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input checked="" type="checkbox"/> 110 Insurance	<input checked="" type="checkbox"/> PERSONAL INJURY	<input checked="" type="checkbox"/> PERSONAL INJURY	<input checked="" type="checkbox"/> 422 Appeal 28 USC 158	<input checked="" type="checkbox"/> 400 State Reapportionment
<input checked="" type="checkbox"/> 120 Marine	<input checked="" type="checkbox"/> 310 Airplane	<input checked="" type="checkbox"/> 362 Personal Injury Med Malpractice	<input checked="" type="checkbox"/> 423 Withdrawal 28 USC 157	<input checked="" type="checkbox"/> 410 Antitrust
<input checked="" type="checkbox"/> 130 Miller Act	<input checked="" type="checkbox"/> 315 Airplane Product Liability	<input checked="" type="checkbox"/> 365 Personal Injury Product Liability	PROPERTY RIGHTS	<input checked="" type="checkbox"/> 430 Banks and Banking
<input checked="" type="checkbox"/> 140 Negotiable Instrument	<input checked="" type="checkbox"/> 320 Assault Libel & Slander	<input checked="" type="checkbox"/> 368 Asbestos Personal Injury Product Liability	<input checked="" type="checkbox"/> 450 Commerce/ICC Rates/etc.	
<input checked="" type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment	<input checked="" type="checkbox"/> 330 Federal Employers Liability	PERSONAL PROPERTY	<input checked="" type="checkbox"/> 460 Deportation	
<input checked="" type="checkbox"/> 151 Medicare Act	<input checked="" type="checkbox"/> 340 Marine	<input checked="" type="checkbox"/> 370 Other Fraud	<input checked="" type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations	
<input checked="" type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans)	<input checked="" type="checkbox"/> 345 Marine Product Liability	<input checked="" type="checkbox"/> 371 Truth in Lending	<input checked="" type="checkbox"/> 480 Consumer Credit	
<input checked="" type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits	<input checked="" type="checkbox"/> 350 Motor Vehicle	<input checked="" type="checkbox"/> 380 Other Personal Property Damage	<input checked="" type="checkbox"/> 490 Cable/Satellite TV	
<input checked="" type="checkbox"/> 160 Stockholders Suits	<input checked="" type="checkbox"/> 355 Motor Vehicle Product Liability	<input checked="" type="checkbox"/> 385 Property Damage Product Liability	<input checked="" type="checkbox"/> 810 Selective Service	
<input checked="" type="checkbox"/> 190 Other Contract	<input checked="" type="checkbox"/> 360 Other Personal Injury	LABOR	<input checked="" type="checkbox"/> 850 Securities/Commodities/Exchange	
<input checked="" type="checkbox"/> 195 Contract Product Liability		SOCIAL SECURITY	<input checked="" type="checkbox"/> 875 Customer Challenge 12 USC 3410	
<input checked="" type="checkbox"/> 196 Franchise		<input checked="" type="checkbox"/> 710 Fair Labor Standards Act	<input checked="" type="checkbox"/> 861 HIA (1395ff)	
REAL PROPERTY	CIVIL RIGHTS	<input checked="" type="checkbox"/> 720 Labor/Mgmt Relations	<input checked="" type="checkbox"/> 862 Black Lung (923)	
<input checked="" type="checkbox"/> 210 Land Condemnation	<input checked="" type="checkbox"/> 441 Voting	<input checked="" type="checkbox"/> 730 Labor/Mgmt Reporting & Disclosure Act	<input checked="" type="checkbox"/> 863 DIWC/DIWW (405(g))	
<input checked="" type="checkbox"/> 220 Foreclosure	<input checked="" type="checkbox"/> 442 Employment	<input checked="" type="checkbox"/> 740 Railway Labor Act	<input checked="" type="checkbox"/> 864 SSID Title XVI	
<input checked="" type="checkbox"/> 230 Rent Lease & Ejectment	<input checked="" type="checkbox"/> 443 Housing	<input checked="" type="checkbox"/> 790 Other Labor Litigation	<input checked="" type="checkbox"/> 865 RSI (405(g))	
<input checked="" type="checkbox"/> 240 Torts to Land	<input checked="" type="checkbox"/> 444 Welfare	<input checked="" type="checkbox"/> 791 Emp/Ret Inc. Security Act	FEDERAL TAX SUITS	
<input checked="" type="checkbox"/> 245 Tort Product Liability	<input checked="" type="checkbox"/> 440 Other Civil Rights	<input checked="" type="checkbox"/> 870 Taxes (US Plaintiff or Defendant)	<input checked="" type="checkbox"/> 895 Freedom of Information Act	
<input checked="" type="checkbox"/> 290 All Other Real Property	<input checked="" type="checkbox"/> 445 Amer w/ disab - Empl	<input checked="" type="checkbox"/> 871 IRS - Third Party 26 USC 7609	<input checked="" type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice Act	
	<input checked="" type="checkbox"/> 446 Amer w/ disab - Other		<input checked="" type="checkbox"/> 950 Constitutionality of State Statutes	
			<input checked="" type="checkbox"/> 890 Other Statutory Actions	

VI. CAUSE OF ACTION (CITE THE US CIVIL STATUTE UNDER WHICH YOU ARE FILING AND WRITE BRIEF STATEMENT OF CAUSE. DO NOT CITE JURISDICTIONAL STATUTES UNLESS DIVERSITY)

LABOR MANAGEMENT RELATIONS ACT SEC. 29 USC (See 186(a))

VII. REQUESTED IN COMPLAINT: CHECK IF THIS IS A CLASS ACTION DEMAND \$ CHECK YES only if demanded in complaint:

UNDER F.R.C.P. 23

JURY DEMAND: YES NOVIII. RELATED CASE(S) PLEASE REFER TO CIVIL L.R. 3-12 CONCERNING REQUIREMENT TO FILE
IF ANY NONE "NOTICE OF RELATED CASE".

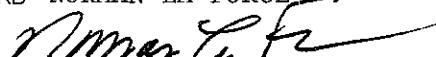
IX. DIVISIONAL ASSIGNMENT (CIVIL L.R. 3-2)

(PLACE AND "X" IN ONE BOX ONLY)

 SAN FRANCISCO/OAKLAND SAN JOSE

DATE 8/17/07

SIGNATURE OF ATTORNEY OF RECORD NORMAN LA FORCE



1 Norman La Force, State Bar #102772
 2 Fortune, Drevlow, O'Sullivan & Hudson
 3 560 Mission Street, 21st Floor
 San Francisco, CA 94105
 (415) 227-2300

4 Attorneys for Defendant
 5 TGC 24 Hour Truck Center

07/11/07 PM 2:03
 07/11/07 PM 2:03

UNITED STATES DISTRICT COURT
 NORTHERN DISTRICT OF CALIFORNIA

JCS
 C 07 4236

10 FIKREI ASHKAR,

Case No.:

11 Plaintiff/Respondent,

NOTICE OF REMOVAL OF ACTION
 PURSUANT TO 28 U.S.C. §1441(b)
 [Federal Question Jurisdiction]

12 vs.

13 IGC 24 HOUR TRUCK REPAIR INC.; TGC
 14 TRUCK REPAIR, INC., Does I-XX,

COPY

15 Defendants/Petitioners

16
 17 TO THE CLERK OF THE ABOVE ENTITLED COURT:

18 PLEASE TAKE NOTICE THAT Defendant /Petitioner IGC 24 Hour Truck Center
 19 hereby removes the state court action described below to this Court.

20 1. On June 28, 2007, plaintiff Fikret Ashkar commenced an action in the Superior
 21 Court of the State of California for the County of San Francisco entitled, Fikret Ashkar, v.
 22 TGC 24 Hour Truck Repair, Inc., Case No. CGC07-464703. A copy of the complaint and
 23 other State Court filings are attached hereto as Exhibit A.

24 2. On July 6, 2007 the plaintiff served the complaint on TGC 24 Hour Truck Repair,
 25 Inc.

26 3. On July 11, 2007 Norman La Force of Fortune, Drevlow, O'Sullivan & Hudson were
 27 retained to defend TGC 24 Hour Truck Repair, Inc.

1 4. On July 18, 2007 Mr. La Force discussed the case with his client's representatives
2 and on July 19, 2007 sent a letter to them asking them for all documents related to the case.

3 5. Plaintiff's complaint is a complaint for termination from his job as a mechanic at
4 TGC 24 Hour Truck Repair, Inc. Plaintiff alleged the following causes of action, all of which
5 were State law claims only:

6 First Cause of Action for Violation of California Government Code §12940 (Disability
7 discrimination under California's Fair Employment & Housing Act (FEHA);

8 Second Cause of Action under California Labor Code §§201, 203, 218, and 218.5.

9 No where in the complaint did plaintiff allege that he was a member of a labor union
10 subject to a collective bargaining agreement with defendants.

11 6. On August 3, 2007 Norman La Force received plaintiff's employee file and other
12 documents from his client. Included in those documents was the complete Collective
13 Bargaining Agreement between defendant TGC 24-Hour Truck Repair, Inc. and the Peninsula
14 Auto Machinists Lodge No. 1414 and the Machinists Automotive Trades District Lodge No.
15 190 of Northern California of the International Association of Machinists and Aerospace
16 Workers union. The documents also included evidence that plaintiff was a member of this
17 union and subject to the collective bargaining agreement.

18 7. Thus, only on August 3, 2007 did counsel for defendant became aware that counsel
19 had both the factual and legal basis under the Labor Management Relations Act, (LMRA) 29
20 U.S.C. §185(a) that plaintiff's claims raised a federal question subject to removal and that
21 plaintiff's claims were completely pre-empted. *Franchise Tax Board v. Construction Laborers
22 Vacation Trust*, 463 U.S. 1, 23 (1983).

23 8. Counsel had a long planned vacation from August 9, 2007 to August 13, 2007 and
24 promptly upon his return has had this petition for removal filed such that it is filed within 30
25 days of when it was first ascertained that the case is one which is or has become subject to
26 removal pursuant to 28 U.S.C. §1441(b).

27 9. Pursuant to 28 U.S.C. §1332, this Court has original jurisdiction over this civil
28 action and this defendant can remove this case to this Court pursuant to 28 U.S.C. §1441(b)

1 because this case raises a federal question under the LMRA and the LMRA completely pre-
2 empts all State Court claims that plaintiff has asserted.

3 10. Counsel for the served party defendant TGC 24 Hour Truck Repair, Inc. will also
4 be counsel for TGC Truck Repair, Inc. if it is served as both entities are operated under the
5 same management and TGC Truck Repair, Inc. consents to this removal.

6 Wherefore, defendant/petitioner TGC 24 Hour Truck Center prays that
7 this action now pending in the Superior Court of the State of California, County of San
8 Francisco be removed to this Court.

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10 Dated: August 17, 2007

Fortune, Drevlow, O'Sullivan & Hudson

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12 By: 
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14 Norman La Force
15 Attorney for Defendant
16 TGC 24 Hour Truck Center
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1 LOUIS A. HIGHMAN, CBN 61703
2 LAWRENCE BALL, CBN 60496
2 HIGHMAN, HIGHMAN & BALL
A Professional Law Association
3 870 Market Street, Suite 467
San Francisco, CA 94102
4 Telephone: (415) 982-5563
5 Attorneys for Plaintiff Fikret Ashkar

FILED
San Francisco County Superior Court

JUN 28 2007

BY: *Deborah Stepper*
GORDON PARK-LI, Clerk
DEBORAH STEPPE, Deputy Clerk
CASE MANAGEMENT CONFERENCE SET

6
7 **SUMMONS ISSUED** NOV 30 2007 -9AM

8 In the Superior Court of the State of California
9

10 In and for the County of San Francisco

11 Unlimited Civil Jurisdiction CGC-07-464703

12 FIKRET ASHKAR

No.

13 Plaintiff,

14 COMPLAINT--
15 VIOLATION OF CALIFORNIA
16 GOVERNMENT CODE SECTION
17 12940 (DISABILITY
18 DISCRIMINATION; FAILURE
19 TO MAKE REASONABLE;
20 ACCOMMODATION FOR
21 DISABILITY; FAILURE TO
22 ENGAGE IN INTERACTIVE
23 PROCESS RE DETERMINATION
24 OF DISABILITY;
25 RETALIATION); CAUSE OF
ACTION BROUGHT UNDER
CALIFORNIA LABOR CODE
SECTIONS 203, 218, AND
218.5 FOR FAILURE TO PAY
WAGES IN TIMELY MATTER AT
TIME OF TERMINATION
IN VIOLATION OF CALIFORNIA
LABOR CODE SECTIONS 201
AND 203

26 Defendants.

[LABOR]

27 Plaintiff Fikret Ashkar alleges as follows:

28 FIRST CAUSE OF ACTION

(VIOLATION OF CALIFORNIA GOVERNMENT CODE SECTION 12940,
BROUGHT AGAINST ALL DEFENDANTS)

1 1. Plaintiff Fikret Ashkar was employed as a mechanic
2 by defendants TGC 24 Hour Truck Repair, Inc. and TGC Truck
3 Repair, Inc. in San Francisco, California starting on or about
4 March 23, 1999. He was terminated involuntarily on or about
5 August 15, 2006.

6 2. Plaintiff is informed and believes that defendant
7 TGC 24 Hour Truck Repair, Inc. is a California corporation
8 with its principal place of business in San Francisco,
9 California, where plaintiff was at all relevant times herein
10 employed.

11 3. Plaintiff is informed and believes that defendant
12 TGC 24 Hour Truck Repair, Inc. is a California corporation
13 with its principal place of business in San Francisco,
14 California, where plaintiff was at all relevant times herein
15 employed.

16 4. The true names and capacities, whether individual,
17 corporate, partnership, associate, or otherwise, of defendants
18 sued herein as DOES I-XX, inclusive, are unknown to plaintiff,
19 who therefore sues said defendants by such fictitious names
20 and will pray leave to amend this complaint together with
21 appropriate charging allegations when the same have been
22 ascertained. Plaintiff is informed and believes and thereupon
23 alleges that each of said fictitiously named defendants is
24 responsible in some manner for occurrences herein alleged, and
25 that plaintiff's damages, as herein alleged, were proximately
26 caused by their conduct.

27 5. Plaintiff was hired by defendants as a journeyman
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1 mechanic on or about March 23, 1999.

2 6. On or about May 22, 2006, plaintiff was injured
3 while working on a 1967 truck which had a battery charging
4 problem. To fix the problem, plaintiff needed to check the
5 charging system by using a charging gauge to measure the
6 output of the alternator. To do this task, plaintiff had to
7 climb up on the bumper of the truck stand on the radiator and
8 valve cover to reach the accelerator lever to increase the
9 RPMs. He used his hand to adjust the accelerator lever.
10 While he was doing this, the clutch exploded and something
11 hit him on the right side of his head behind his ear. He was
12 bleeding from this area. He got down from the engine and saw
13 debris on the ground.

14 7. Plaintiff reported the incident to Service Manager
15 Randy Scott. Scott falsely accused plaintiff of blowing the
16 engine. The President, John McGuire, also came out to find
17 out what happened. McGuire saw swelling behind plaintiff's
18 ear and told him to go to Bay Medical Center to see a doctor.
19 Because plaintiff's neck hurt, the doctor at Bay Medical
20 Center put plaintiff on modified work and specified that he
21 should not reach above his head.

22 8. When plaintiff returned to defendants' shop at about
23 noon, defendants told him he was suspended for three days.

24 9. When plaintiff returned to work after his
25 suspension was over on May 25, 2006, his treating physician
26 had indicated in a note in writing to defendants that as of
27 May 23, 2006, plaintiff was to be put on modified work duty
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1 with the following restrictions: "limit bending of neck,
2 looking overhead." This restriction remained in effect until
3 on or about June 16, 2006, when plaintiff's health provider
4 wrote a note indicating, "Continue modified work with the
5 following restrictions: Limited lifting, pushing, pulling,
6 20 lbs., no overhead reaching, limited rotation of the neck."
7 This restriction remained in effect until on or about June
8 29, 2006, when plaintiff's health provider put on the
9 following restrictions in a note: "Limited lifting, pushing,
10 pulling 25 lbs. No overhead reaching." This last modified
11 restriction remained in effect thereafter for the duration of
12 plaintiff's employment.

13 10. When plaintiff returned to work after his
14 suspension was over on May 25, 2006, plaintiff is informed
15 and believes that Service Manager Randy Scott was aware of
16 the restrictions which his health provider had placed on him,
17 as aforesaid. Scott was also aware that plaintiff had a
18 disability involving his neck, shoulders, and upper back, and
19 loss of hearing, related to the May 22, 2006 injury which had
20 occurred at work. At this time, Scott gave plaintiff a
21 workers' compensation form to fill out and told him to go
22 upstairs to talk to John McGuire, the President. McGuire was
23 not there yet, so plaintiff told Scott he would wait for
24 McGuire and go upstairs when he arrived.

25 11. Scott told plaintiff to go home because plaintiff
26 did not go upstairs.

27 12. Plaintiff called McGuire from home later that

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1 morning. McGuire told plaintiff to forget his dignity, and
2 come back to work because they needed plaintiff to work as a
3 technician.

4 13. Plaintiff returned to work at 11 a.m. that same day,
5 May 25, 2006, and spoke with McGuire.

6 14. McGuire told plaintiff to forget about the doctor's
7 work restrictions. He said, "You know what I mean."

8 15. After this conversation, defendants gave plaintiff
9 difficult jobs including installing a transmission, which
10 required plaintiff to perform work in excess of his doctor's
11 work restrictions, and in violation of his doctor's orders,
12 which defendants knew about.

13 16. The transmission installation job put a strain on
14 plaintiff's neck, shoulders, and upper back, which is where
15 the problem was, and aggravated his disability/condition in
16 connection therewith. Numerous other jobs defendants gave
17 plaintiff also violated the doctor's work restrictions, and
18 acted to aggravate plaintiff's injury/disability.

19 17. Plaintiff's neck and shoulders were not getting
20 better and on July 7, 2006, plaintiff's doctor asked
21 plaintiff what kind of jobs plaintiff was doing, and whether
22 the employer was following the physical restrictions the
23 doctor had put on plaintiff's work activity. Plaintiff told
24 the doctor that the employer was not following the
25 limitations the doctor had imposed on his work activity, and
26 was repeatedly making him do work which was beyond the
27 restrictions imposed.

28

1 18. Plaintiff is informed and believes that on or about
2 that same day (on or about July 7, 2006), plaintiff's
3 physician called defendants to complain about the employer
4 not adhering to the restrictions on work which the doctor had
5 been providing for plaintiff.

6 19. Later in the day on or about July 7, 2006, Randy
7 Scott told plaintiff that the doctor had called about
8 plaintiff not receiving modified duty. Scott assigned
9 plaintiff a task to scrape and paint the building, which was
10 a difficult task which was not good for plaintiff's neck and
11 shoulders, and which ignored the doctor's physical
12 restrictions which the doctor had placed on the work
13 plaintiff could do. Plaintiff protested the work as being
14 contrary to the doctor's restrictions and orders, but Scott
15 made plaintiff do the work despite the fact it was violative
16 of the doctor's restrictions and orders, and despite
17 plaintiff's protest.

18 20. Also, on or about July 7, 2006, plaintiff had
19 discovered additional work that needed to be done on a
20 vehicle. Pursuant to defendants' policy, in such a case, the
21 technician who makes the discovery of additional work which
22 needs to be done, is given a sticker (aka "spiff") which
23 gives the employee credit for \$10 or \$20. Randy Scott told
24 plaintiff that before plaintiff could get a spiff for this
25 discovery of additional work, the customer would have to
26 authorize the additional work. Plaintiff accordingly
27 thereafter waited to see if he would get the spiff.

28

1 21. From the time of the accident on (from
2 approximately May 22, 2007 onward), plaintiff was seeing the
3 doctor once a week and going to physical therapy twice a week
4 for his neck, shoulders, and upper back. Defendants stopped
5 paying plaintiff for his time spent at the doctor or at
6 physical therapy, after a short time, so plaintiff decided to
7 make the doctor appointments for 7 a.m., before work, and the
8 physical therapy appointments for 4 p.m., after work.

9 22. On or about July 14, 2006, plaintiff had to see a
10 different doctor, and the appointment was made for 10 a.m.
11 Plaintiff had given Randy Scott, the Service Manager, a copy
12 of the appointment slip the week before the appointment.
13 When plaintiff left the shop at or about 9:45 a.m. in order
14 to get to the doctor on time, he told Scott he was going to
15 the doctor. Scott said, "Oh, you're striking again."

16 23. When plaintiff returned to the shop at or about
17 11:45 a.m. on July 14, 2006, after his doctor's appointment,
18 Randy Scott told plaintiff that he should have told him ahead
19 of time about the appointment. Plaintiff had in fact
20 informed Scott about the appointment the week before the
21 appointment.

22 24. On or about July 14, 2006, the same day plaintiff
23 returned from the doctor's appointment at or about 11:45
24 a.m., plaintiff was thereafter present when an employee named
25 Mark Scardino and Randy Scott (the Service Manager) were
26 discussing a spiff for another technician. Plaintiff brought
27 up the fact he had not been given a spiff for July 7, 2006,
28

1 and stated he should have been. In response, Randy Scott got
2 mad and told plaintiff to go back to work or he would fire
3 plaintiff. Defendants then sent plaintiff home at or about
4 12:38 p.m.

5 25. Plaintiff telephoned McGuire from home, and
6 complained that he had been sent home because he had opposed
7 not getting a spiff which he was entitled to. McGuire said
8 it didn't seem fair to him, and he wasn't there now, but he'd
9 look into it later.

10 26. When plaintiff returned to work on Monday morning,
11 July 17, 2006, there were two written letters of warning
12 waiting for him in the time card rack along with the spiff he
13 had not received before. One of the two written letters was
14 a Letter of Reprimand for allegedly arguing with the service
15 manager about the spiff on July 14, 2006. The second of the
16 two written letters was a Letter of Reprimand for allegedly
17 not giving any advance notice of plaintiff's doctor
18 appointment to Randy Scott.

19 27. On or about July 20, 2006, plaintiff talked to
20 McGuire in his office, and showed him the warnings and said
21 they weren't fair. He also pointed out that one of the
22 warnings was partially illegible. Plaintiff told McGuire
23 that since the time he was injured, he had been treated
24 unfairly in different ways, and these warnings were one of
25 the ways he was being treated unfairly since his injury.
26 McGuire said plaintiff was the one who had blown the engine
27 on May 22, and because of that he was injured. Plaintiff
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1 said that wasn't true, that he hadn't blown the engine.
2 McGuire told plaintiff not to worry about the service
3 manager, and not to worry about the warnings. He said he
4 knew plaintiff was a good technician. McGuire brought up an
5 incident in which a customer had complained he was
6 overbilled, in that the customer had been informed by someone
7 that part of the repairs he was being billed for had been
8 caused by the technician working on the vehicle, which had
9 caused certain damage to the engine when he was fixing
10 something. McGuire indicated he was displeased that the
11 company had to do that part of the repair for free after a
12 technician had reported to the customer that part of the
13 repairs were for damage done by the technician. McGuire said
14 he had heard from someone that they had seen plaintiff with
15 paperwork in his hand and on the phone, and thought he was
16 the one who had tipped off the customer. Plaintiff denied
17 talking to the customer, and stated that he was not the
18 person who had worked on that vehicle, and that he hadn't
19 called the customer or had anything to do with it. Plaintiff
20 asked McGuire if he could do anything about the two Letters
21 of Reprimand he had received, and McGuire said not now.
22 McGuire said if plaintiff had any additional information
23 about how he had been treated unfairly or differently from
24 others after his injury to send it to him by e-mail.

25 28. Accordingly, plaintiff sent McGuire an e-mail on
26 July 31, 2006, giving additional information related to how
27 he was being treated unfairly and differently than others
28

1 were after plaintiff's injury.

2 29. In response to plaintiff's July 31, 2006 e-mail,
3 McGuire wrote back to plaintiff an e-mail on the same date
4 stating, "Thank you for your interest in our service
5 operation. I will review your comments shortly, and inform
6 you of my impressions regarding appropriate action."

7 However, McGuire never thereafter got back to plaintiff in
8 this regard.

9 30. Plaintiff continued thereafter to have to perform
10 work assignments for defendants which ignored the doctor's
11 orders on restrictions on physical activity which had been
12 communicated to defendants.

13 31. On or about August 15, 2006, Randy Scott, the
14 Service Manager, assigned plaintiff and another employee who
15 had injured his finger on the job to a job which required
16 plaintiff and the other employee to lift a piece of equipment
17 weighing approximately 70 pounds and take it into a machine
18 shop. At that time, plaintiff was restricted from lifting
19 over 25 pounds by his doctor's orders. Defendants knew of
20 this restriction, and consciously chose to ignore it.

21 32. When plaintiff returned from the machine shop,
22 Randy Scott told plaintiff to go to McGuire's office.
23 McGuire yelled at plaintiff that he had scheduled himself for
24 GM training classes in Los Angeles.

25 33. In this regard, plaintiff on a number of occasions
26 had had to take GM training classes in the Los Angeles area.
27 There had never been any issue with that. Paul, the business
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1 manager, had told plaintiff he would need to pass a basic
2 truck electric test on-line in order to take future GM
3 training classes in Los Angeles. Randy Scott, the service
4 manager, had told a co-worker of plaintiff named Terry to go
5 upstairs to the computer to show plaintiff how to take the
6 truck electric test on line. Terry went upstairs and
7 assisted plaintiff in signing up to take the test on line.
8 Plaintiff is informed and believes that the information used
9 to sign up plaintiff to take the test on line was then
10 automatically turned into enrollment of plaintiff to take GM
11 Training by the GM Training website.

12 34. When McGuire yelled at plaintiff on August 15, 2006,
13 that he had scheduled himself for GM Training classes in Los
14 Angeles, and had acted behind their back, plaintiff said that
15 was not true. Plaintiff told McGuire that his understanding
16 was that he was enrolled automatically when Terry had helped
17 him sign up online to take the electric truck test (which was
18 a prerequisite to take additional GM training classes).
19 Plaintiff further stated that it was his understanding that
20 the enrollment could be cancelled (without penalty or cost),
21 and that the employer ultimately had to pay the bill for the
22 training for the training to happen. Plaintiff told McGuire
23 that Terry was the one who had assisted him in signing up for
24 the truck electric test, and that his information had been
25 put in the computer system then to enroll automatically, and
26 that his understanding was that other employees had followed
27 the same procedure and been enrolled for GM training, with
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1 the employer having the option to cancel it (just like they
2 had the option to cancel it for plaintiff).

3 35. McGuire called in Terry then, but then told Terry
4 to leave without letting Terry speak.

5 36. McGuire said the employer would decide when
6 plaintiff would go to training, and told plaintiff it was
7 "over", and fired him. Plaintiff's understanding of the
8 procedure was that the company would learn about the proposed
9 training before it happened, and then would choose to
10 authorize it if it wished plaintiff to take the course(s)
11 indicated. Plaintiff was unaware that there would be any
12 penalties which defendants would have to pay in case of a
13 cancellation, and had not been told that. As far as
14 plaintiff was aware, he was following correct procedure, and
15 the procedure followed by other employees of defendants.

16 37. Plaintiff was unlawfully terminated by defendants
17 on August 15, 2006.

18 38. Defendants consistently ignored the doctor's
19 restrictions on plaintiff doing certain types of work from
20 May 25 to August 15, 2007, and repeatedly during this period
21 required plaintiff to do jobs which required performance of
22 certain duties in excess of and in disregard of the
23 restrictions which the doctor had ordered regarding
24 plaintiff, and which had been communicated to defendants.

25 39. After terminating plaintiff on August 15, 2006,
26 defendants sent a partial final paycheck to plaintiff along
27 with a letter dated August 18, 2006, which plaintiff did not
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1 receive until August 23, 2006. In this letter to plaintiff
2 dated August 18, 2006, defendants indicated they were
3 withholding part of plaintiff's vacation pay in reserve
4 pending the return of company uniforms.

5 40. Plaintiff returned his company uniforms on August
6 18, 2006.

7 41. Defendants continued to withhold the balance of
8 plaintiff's vacation pay until they finally sent him a check
9 for the balance of the vacation pay. The check date for the
10 balance of the vacation pay was August 25, 2006, but
11 plaintiff did not receive the check until September 6, 2006.

12 42. Plaintiff has filed an administrative complaint of
13 discrimination with the California Department of Fair
14 Employment and Housing against defendants, and has met all
15 necessary administrative requirements prior to filing the
16 judicial action herein in full and in a timely fashion.

17 43. Defendants and each of them have violated various
18 sections of the California Fair Employment and Housing Act,
19 including, without limitation, as follows:

20 (a) Defendants and each of them violated Government
21 Code Section 12940(a) in that they disciplined and discharged
22 plaintiff, and otherwise discriminated against him in
23 compensation and/or in terms, conditions, or privileges of
24 employment because of his disabilities and his having sought a
25 reasonable accommodation for his disabilities.

26 (b) Defendants and each of them violated Government
27 Code Section 12940(m) in that they failed to make reasonable
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1 accommodations for the known physical disabilities of
2 plaintiff.

3 (c) Defendants and each of them violated Government
4 Code Section 12940(n), in that said defendants failed to
5 engage in a timely, good faith, interactive process with
6 plaintiff to determine effective reasonable accommodations, if
7 any, in response to a request for reasonable accommodation by
8 an employee with a known physical disability or known medical
9 condition.

10 (d) Defendants and each of them violated Government
11 Code Section 12940(h) in that they disciplined and discharged
12 plaintiff and discriminated against him in compensation and/or
13 in terms, conditions, or privileges of employment because he
14 had opposed practices forbidden under the Fair Employment and
15 Housing Act, including, without limitation, in that he had
16 persisted in seeking a reasonable accommodation for disability
17 (which defendants had repeatedly denied him), and had opposed
18 defendants' attempts to deny allowing him a reasonable
19 accommodation for disability and defendants' discriminating
20 against him related to his disability.

21 44. As a proximate result of said violations of the
22 California Fair Employment and Housing Act by defendants,
23 plaintiff has sustained, and continues to sustain, economic
24 damages in an amount to be shown according to proof.

25 45. As a further proximate result of said violations
26 of the California Fair Employment and Housing Act by
27 defendants, plaintiff has suffered, and continues to suffer,
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1 pain and suffering, physical injury, emotional distress,
2 mental anguish, shame, embarrassment, humiliation, trauma, and
3 injury to reputation, and is entitled to an award of damages
4 to compensate him therefor, in an amount to be shown according
5 to proof.

6 46. Said defendants' violation of plaintiff's rights
7 under the California Fair Employment and Housing Act, as
8 aforesaid, has been malicious and oppressive, and plaintiff is
9 entitled to an award of punitive and exemplary damages
10 therefor.

11 47. Plaintiff has been compelled to engage the services
12 of attorneys in order to prosecute the action herein, and is
13 accordingly entitled to an award of reasonable attorneys' fees
14 and costs, according to proof.

15 WHEREFORE, plaintiff prays judgment against defendants
16 and each of them as set forth below.

SECOND CAUSE OF ACTION

18 (CAUSE OF ACTION BROUGHT UNDER CALIFORNIA LABOR CODE
19 SECTIONS 203, 218, AND 218.5 FOR FAILURE TO PAY WAGES IN
20 TIMELY MANNER AT TIME OF TERMINATION IN VIOLATION OF
CALIFORNIA LABOR CODE SECTIONS 201 AND 203, BROUGHT
AGAINST ALL DEFENDANTS)

21 48. Plaintiff refers to the allegations of paragraphs
22 1-41 of this complaint, and incorporates the same herein by
23 this reference as though set forth in full.

24 49. Under California Labor Code Section 201, an
25 employer must pay a discharged employee all wages earned and
26 unpaid immediately upon termination.

27 50. In violation of California Labor Code Section 203.

1 defendants willfully failed to pay plaintiff wages they owed
2 him at the time of his termination.

3 51. Plaintiff did not receive all of the wages he had
4 earned until on or about September 6, 2007, to be shown
5 according to proof.

6 52. Pursuant to California Labor Code Section 203, the
7 willful failure to pay plaintiff his wages owed, in full, at
8 the time of his termination, gives rise to a statutory penalty
9 in an amount equal to the wages of plaintiff continuing as a
10 penalty from the due date of the wages (August 15, 2006) until
11 the date (on or about September 6, 2006) when the wages owing
12 him at the time of his termination were finally paid him in
13 full, to be shown according to proof.

14 53. Plaintiff has had to hire attorneys to prosecute
15 this action, and pursuant to California Labor Code Sections
16 203, 218, and 218.5, plaintiff is entitled to recover an award
17 of reasonable attorneys' fees and costs, in an amount to be
18 shown according to proof.

19 WHEREFORE, plaintiff prays judgment against defendants
20 and each of them as follows:

- 21 1. For general damages, according to proof;
- 22 2. For special damages, according to proof;
- 23 3. For punitive and exemplary damages, according to
24 proof;
- 25 4. For statutory penalties for violations of the
26 California Labor Code, according to proof;
- 27 5. For an award of reasonable attorneys' fees and costs,

1 according to proof;

2 6. For costs of suit; and

3 7. For such other and further relief as this Court deems
4 just and proper.

5 DATED: June 27, 2007.

6 LOUIS A. HIGHMAN
7 BRUCE J. HIGHMAN
8 HIGHMAN, HIGHMAN & BALL

9 
By
10 Attorneys for Plaintiff
11 FIKRET ASHKAR

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CASE NUMBER: CGC-07-464703 FIKRET ASHKAR VS TGC 24 HOUR TRUCK REPAIR, INC. et

NOTICE TO PLAINTIFF

A Case Management Conference is set for:

DATE: NOV-30-2007

TIME: 9:00AM

**PLACE: Department 212
400 McAllister Street
San Francisco, CA 94102-3680**

All parties must appear and comply with Local Rule 3.

CRC 3.725 requires the filing and service of a case management statement form CM-110 no later than 15 days before the case management conference

However, it would facilitate the issuance of a case management order **without an appearance** at the case management conference if the case management statement is filed, served and lodged in Department 212 twenty-five (25) days before the case management conference

Plaintiff must serve a copy of this notice upon each party to this action with the summons and complaint. Proof of service subsequently filed with this court shall so state.

ALTERNATIVE DISPUTE RESOLUTION POLICY REQUIREMENTS

IT IS THE POLICY OF THE SUPERIOR COURT THAT EVERY CIVIL CASE PARTICIPATE IN EITHER MEDIATION, JUDICIAL OR NON-JUDICIAL ARBITRATION, THE EARLY SETTLEMENT PROGRAM OR SOME SUITABLE FORM OF ALTERNATIVE DISPUTE RESOLUTION PRIOR TO A MANDATORY SETTLEMENT CONFERENCE OR TRIAL. (SEE LOCAL RULE 4)

Plaintiff must serve a copy of the Alternative Dispute Resolution Information Package on each defendant along with the complaint. All counsel must discuss ADR with clients and opposing counsel and provide clients with a copy of the Alternative Dispute Resolution Information Package prior to filing the Case Management Statement.

[DEFENDANTS: Attending the Case Management Conference does not take the place of filing a written response to the complaint. You must file a written response with the court within the time limit required by law. See Summons.]

Superior Court Alternative Dispute Resolution Coordinator
400 McAllister Street, Room 103
San Francisco, CA 94102
(415) 551-3876

See Local Rules 3.6, 6.0 C and 10 D re stipulation to commissioners acting as temporary judges

SUMMONS
(CITACION JUDICIAL)

SUM-100

FOR COURT USE ONLY
(SOLO PARA USO DE LA CORTE)

NOTICE TO DEFENDANT:
(AVISO AL DEMANDADO):

TGC 24 HOUR TRUCK REPAIR, INC.;
TGC TRUCK REPAIR, INC.;
DOES I-X,

YOU ARE BEING SUED BY PLAINTIFF:
(LO ESTÁ DEMANDANDO EL DEMANDANTE):
FIKRET ASHKAR

You have 30 CALENDAR DAYS after this summons and legal papers are served on you to file a written response at this court and have a copy served on the plaintiff. A letter or phone call will not protect you. Your written response must be in proper legal form if you want the court to hear your case. There may be a court form that you can use for your response. You can find these court forms and more information at the California Courts Online Self-Help Center (www.courtinfo.ca.gov/selfhelp), your county law library, or the courthouse nearest you. If you cannot pay the filing fee, ask the court clerk for a fee waiver form. If you do not file your response on time, you may lose the case by default, and your wages, money, and property may be taken without further warning from the court.

There are other legal requirements. You may want to call an attorney right away. If you do not know an attorney, you may want to call an attorney referral service. If you cannot afford an attorney, you may be eligible for free legal services from a nonprofit legal services program. You can locate these nonprofit groups at the California Legal Services Web site (www.lawhelpcalifornia.org), the California Courts Online Self-Help Center (www.courtinfo.ca.gov/selfhelp), or by contacting your local court or county bar association.

Tiene 30 DÍAS DE CALENDARIO después de que le entreguen esta citación y papeles legales para presentar una respuesta por escrito en esta corte y hacer que se entregue una copia al demandante. Una carta o una llamada telefónica no lo protegen. Su respuesta por escrito tiene que estar en formato legal correcto si desea que procesen su caso en la corte. Es posible que haya un formulario que usted pueda usar para su respuesta. Puede encontrar estos formularios de la corte y más información en el Centro de Ayuda de las Cortes de California (www.courtinfo.ca.gov/selfhelp/espanol), en la biblioteca de leyes de su condado o en la corte que le quede más cerca. Si no puede pagar la cuota de presentación, pida al secretario de la corte que le dé un formulario de exención de pago de cuotas. Si no presenta su respuesta a tiempo, puede perder el caso por incumplimiento y la corte le podrá quitar su sueldo, dinero y bienes sin más advertencia.

Hay otros requisitos legales. Es recomendable que llame a un abogado inmediatamente. Si no conoce a un abogado, puede llamar a un servicio de remisión a abogados. Si no puede pagar a un abogado, es posible que cumpla con los requisitos para obtener servicios legales gratuitos de un programa de servicios legales sin fines de lucro. Puede encontrar estos grupos sin fines de lucro en el sitio web de California Legal Services, (www.lawhelpcalifornia.org), en el Centro de Ayuda de las Cortes de California, (www.courtinfo.ca.gov/selfhelp/espanol) o poniéndose en contacto con la corte o el colegio de abogados locales.

The name and address of the court is:
(El nombre y dirección de la corte es):

Superior Court of California, County of San Francisco
400 McAllister Street
San Francisco, California 94102

CASE NUMBER:

C6C-07-464703

The name, address, and telephone number of plaintiff's attorney, or plaintiff without an attorney, is:
(El nombre, la dirección y el número de teléfono del abogado del demandante, o del demandante que no tiene abogado, es):
Louis A. Highman #61703, Lawrence Ball #60496, HIGHMAN, HIGHMAN & BALL,
870 Market Street, Suite 467, San Francisco, California 94102 (415) 982-5563

DATE: JUN 28 2007 Clerk, by Jordon Park-Li (Secretario) Deborah Strode Deputy (Adjunto)

(For proof of service of this summons, use Proof of Service of Summons (form POS-010).
(Para prueba de entrega de esta citación use el formulario Proof of Service of Summons, (POS-010)).

NOTICE TO THE PERSON SERVED: You are served

1. as an individual defendant.
2. as the person sued under the fictitious name of (specify):

3. on behalf of (specify):

under: CCP 416.10 (corporation) CCP 416.60 (minor)
 CCP 416.20 (defunct corporation) CCP 416.70 (conservatee)
 CCP 416.40 (association or partnership) CCP 416.90 (authorized person)
 other (specify):

4. by personal delivery on (date):

